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ABSTRACT

One of the training materials prepared for paralegals, or legal assistants, by the National Paralegal Institute under a Federal grant, the document presents legal interviewing techniques by focusing on an analysis of a particular legal interview conducted by a paralegal on a hypothetical case. From the analysis of the case, a number of problems, principles, and guidelines on interviewing emerge. The guide may be used for self-directed study or as part of a classroom training program. Some principles that are covered relate to: building a relationship of trust with the client, selecting seating arrangements, encouraging the client to express his/her thoughts, taking notes, being alert to potential legal problems, exercising self-restraint in the expression of personal opinions or feelings, sensing the client's readiness for directed questions, interpreting non-verbal forms of communication, adapting the style of questioning to the interview context, reviewing the case in concrete steps, instructing the client in preventive law for the future, using the technique of probing, explaining technical terms, recognizing and understanding the dangers of leading questions, and making the client aware of the options. Additional information on determining eligibility in a legal service office, interviewing and investigation, and role-playing is appended. (EA)

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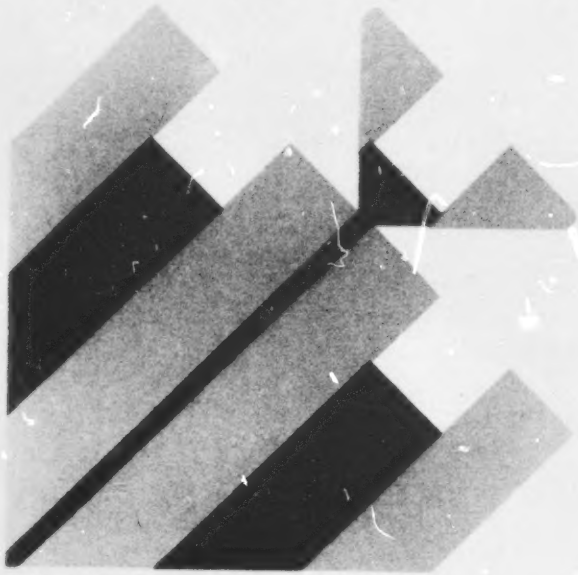

Legal Interviewing for Paralegals

by

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PREFACE

This text is written for paralegals. It may be studied by the paralegal alone or in a classroom as part of a training program conducted by a paralegal trainer.

The text centers on an analysis of a particular legal interview conducted by a paralegal on a hypothetical case. From this analysis a number of problems, principles and guidelines on interviewing emerge.

THE PARALEGAL

There is no universally accepted definition of a paralegal. Generally speaking, a paralegal is a person skilled in providing legal services. He* is not a lawyer, but he undertakes tasks that have been traditionally performed by lawyers. Paralegals may work in law firms, in neighborhood organizations such as a tenant association or a senior citizen center, or for government agencies.

The paralegal is authorized to perform a number of significant activities connected with the delivery of legal services. For example, in many situations, paralegals can interview clients, conduct field investigations, draft legal documents, do research, advocate for clients before administrative agencies, etc.

The paralegal is a technician who works on complex human and legal problems. He will normally work under the supervision of a lawyer and be in a position to consult with or refer special problems to a lawyer.

*Throughout this text, the masculine reference to paralegals should be taken to include female paralegals.

THE LEGAL INTERVIEW

There are at least three kinds of interviews:

(1) The initial client interview;
(2) The follow-up client interview;
(3) The field interview involving someone other than the client.

In the initial client interview, the client is introduced to the kind of legal services offered by the office; facts are obtained; legal problems are identified and the way in which the office will handle the case is explained. Follow-up interviews may occur subsequent to the initial interview when the client is consulted about a variety of matters that require his attention, consent and participation. Finally there is the field interview where the interviewer encounters a great diversity of people for a wide range of purposes. For example, a prospective witness may be questioned about a particular event; a governmental official may be questioned about the services provided by the agency for which the official works, etc.

This text will focus primarily on the initial client interview, although it is submitted that the principles involved in the initial client interview apply with varying degrees of modification to the follow-up client interview and to the field interview (See Appendix "B").

In almost every legal case the first step is the client interview. It is a critical event, the importance of which is usually underestimated. The success of the interviewer in getting clear, complete

facts and an accurate picture of a client's needs and desires often determines the way the entire case proceeds from there. The needs of a client can be missed, the facts mangled and the client's rights damaged by ineffective interviewing.

KNOWING THE LAW

It is absolutely essential that the paralegal interviewer have a firm grasp of some legal concepts before he conducts a client interview. Everything that a legal service office does must connect the needs of the client with the applicable law governing the client's case. This does not necessarily mean, however, that the paralegal must be an expert on the law before studying legal interviewing. There are a great many principles and guidelines involving communication skills that can be studied before the paralegal becomes an experienced interviewer. These skills are the subject-matter of the analysis of a legal interview that follows. Whenever necessary, the law governing the case under discussion will be explained so that the communication skills can be intelligently grasped in context. The text does not aim to teach any substantive or procedural law. The paralegal must obtain this knowledge elsewhere. The central question governing this text is: what techniques of communication are at the disposal of the interviewer so as to best serve the tasks of data collection, problem identification and problem resolution?

COLLECTING YOUR OWN THOUGHTS ABOUT INTERVIEWING AT THE OUTSET

An interview is a sophisticated word for a conversation: two people talking about a topic. There are thousands of types, styles and purposes of interviewing. Here are some examples:

a) You are interviewed for a job;

b) You are interviewed for a loan;

c) A policeman questions you about a crime in the neighborhood;

d) It is about time for your daughter to start thinking about college, so you decide to sit down and have a talk with her about her future.

e) Etc.

Do you think it would be fair to say that in your life you have been interviewed and that you have interviewed others frequently? If so, then you must have a number of thoughts and opinions about interviewing. Before beginning to study the sample legal interview that follows, you should state your own views about interviewing in the space provided below. When you finish studying this text, come back to what you have written here and ask yourself whether your perspective has changed.

1. Describe here what you feel are the central ingredients of a good interview in any setting. What are some of the qualities of a good interview? _____

_____

2. Describe a bad interview. From your experience what are some of the worst blunders that any interviewer can make?

3. Describe here what you feel are your own strong and weak points as an interviewer. Specifically, what do you hope to get out of this course on interviewing? Where do you need improvement?

As we will see, interviewing is a reflection of your personality. There are few, if any absolute answers to the problems of interviewing. There is no such thing as "the perfect interview." There is such a thing, however, as the interview that works, that achieves

its purpose. The purpose of the remainder of this text is to identify and try out as many guidelines as possible which will increase the potential of your conducting legal interviews that work.

KNOWING THE OBJECTIVE OF THE INTERVIEW

Paralegals in different settings will have widely differing ranges of duties and authority. In a private law office, for example, the paralegal's exposure to interviewing may be limited. Usually, an attorney will see the client before the paralegal does and will assign to the paralegal the role of gathering detailed information on a specific topic. For example, a paralegal may be asked to help a bankruptcy client detail his debts and financial entanglements by listing them all on a worksheet. In a government funded legal service office, the interviewing options for the paralegal are wide. For example, a paralegal may be responsible for asking a series of specific questions from a list to prepare the client for an interview with a lawyer about a divorce. On the other hand, he might have an initial interview with a client whose problem is unknown to the office until the paralegal interviews him. The paralegal could remain the primary office contact for the client throughout the resolution of his case. There are a great number of possible duties between the responsibility of obtaining specific information under controlled conditions to that of building a relationship between the office and the client, making decisions about what kind of information is needed and obtaining this general and specific information. In executing all of these duties, the paralegal will need a clear grasp of the objective of the interview.

Unless the paralegal knows what to accomplish in the interview, valuable time will be wasted. For example, suppose that a client is being interviewed in order to extract, record and develop the grounds (legally sufficient reasons) for a divorce. The paralegal does not simply write down all the facts about the marriage and the client's problems with it. He must also arrange the facts in such a way that they add up to grounds for divorce, if they exist. Unless he has this objective in mind before and during the interview, he may end up with a large collection of facts which will require a second interview to make them useful or to supplement them. This does not mean that the paralegal cannot talk about anything other than what is directly related to the objective; but it does mean that each interview must have a difinitive <u>focus</u>.

This also illustrates the earlier statement that a paralegal should know some legal concepts. If a client seeks a divorce, the initial interview should discover whether the facts of the case fit within the allowed legal grounds for divorce. Clearly, the paralegal must know and understand the grounds for divorce in his state in order to conduct an efficient interview.

ADEQUATE PREPARATION

Adequate preparation involves knowing the scope and specific purposes of the interview and relating them in advance to the interviewing process itself. Often the best preparation is maintaining a posture of flexibility. The interviewer must be prepared to confront the unexpected. Seldom, if ever, will the interviewer's scenario of what will take place in the interview in fact occur. Sometimes the interviewer will have available to him a questionnaire, checklist or form to assist him in asking the proper questions of the client. It is absolutely essential for a paralegal to understand both the meaning and the purpose of each question on the form so that he can intelligently relate the client's answers to the questions. If no such form exists, then the paralegal should make his own checklist of questions that he will ask. Again, however, flexibility is the key. The paralegal should never feel obliged to run through any set of pre-determined questions mechanically. Otherwise, the paralegal won't be listening to the client and will run the risk of by-passing leads that the client consciously or unconsciously provides.

ANALYSIS OF A LEGAL INTERVIEW

We're going to examine the case of Mr. Sam Donnelly, a senior citizen, who walks into a neighborhood legal service office seeking legal assistance. Mr. Donnelly is interviewed by Miss Collins, a paralegal working for the office.

[Setting: There is a knock at Miss Collin's door. She gets up from her chair, goes over to the door, opens it and says to the man facing her as she extends her hand in handshake:]

Paralegal: *Hello, my name is Miss Collins. Won't you come in?*

Suppose that the paralegal did not go to the door to greet the client, and instead merely called from her chair, "come in", in a loud voice. Do you think that it makes any difference whether the interviewer walks over to the client or not? When an individual walks with someone into a room, isn't the individual saying "come share my room with me"? If, on the other hand, the individual is seated at his desk and calls the visitor in, isn't the message to the visitor likely to be: "This is my room; I am in control of it; you may enter"?

Many legal interviewers do not walk to the door to greet clients. Two reasons may account for this. First, the interviewer may think that it is too tiring to do this all day for every client that must be interviewed. Secondly, the interviewer may consciously or unconsciously want to project himself as a figure of authority to the client.

The client comes to the interviewer; not vice versa. Both of these reasons are unfortunate and perhaps counterproductive to the objectives of a legal interview. This is not to say that an interviewer is in error if he does not walk over to greet a client every time. Each interviewer develops a style, with which he is comfortable, of making a client feel welcome and at ease. Forced or empty ritual is not only unnecessary but potentially harmful.

Principle: THE INTERVIEWER HAS THE RESPONSIBILITY OF BUILDING A RELATIONSHIP OF TRUST WITH THE CLIENT.

The interviewer cannot assume that the client will approve of and be receptive to everything the interviewer does simply because the interviewer is trying to help the client. It may be more appropriate to assume that the client is confused about who the interviewer is, and therefore will be somewhat suspicious of everything the interviewer does until some trust has been established.

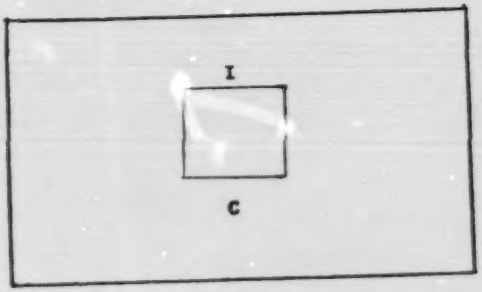
Why this great concern for the feelings and state of mind of the client? There are two answers to this important question and these answers will be with us in one form or another throughout this text. First, the provision of legal aid is a human service which in and of itself demands the treatment of clients with dignity. Second, providing legal services requires a close, cooperative relationship between client and legal service personnel. The danger of the client giving misinformation because of a lack of understanding of what information

he is being asked for; the danger of a client disappearing in the middle of a case because of a feeling that the office is not providing satisfactory service as the client sees it; the danger of a client being a poor witness on his own behalf or in doing an inadequate job in helping the office locate other witnesses or documents — these dangers are all increased if the client is mistrustful, confused, or otherwise uncomfortable about what the interviewer says or does, or just as importantly, about what the interviewer doesn't say or doesn't do.

Paralegal: *Let me take your coat for you. Won't you have a seat?* [The paralegal points the client toward a chair which is at the opposite end of the desk where the paralegal sits. They are facing each other].

Note the seating arrangement selected by the paralegal as illustrated in diagram A on the following page. "I" stands for "interviewer" and "C" stands for "client:"

Diagram A.



A number of other seating arrangements could have been used:

Diagram F.

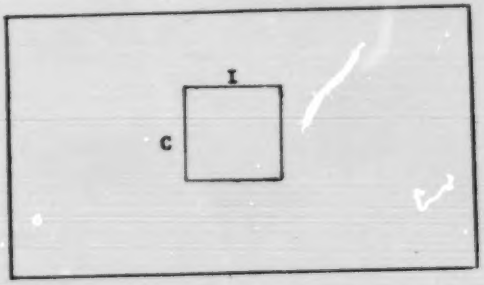


Diagram C.

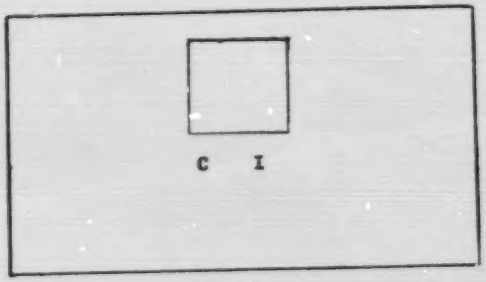
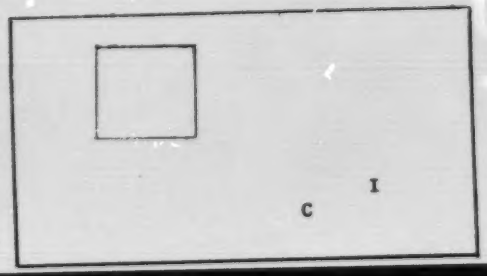


Diagram D.



Normally, the interviewer has the option of arranging the seats any way he wants. The chairs could be arranged so that he and the client sit at opposite ends of a desk (diagram A), diagonally across a desk (diagram B), at the same end of a desk (diagram C) or at another end of the room away from the desk altogether (diagram D). Seating arrangements are usually made at the convenience of the owner of the office. Rarely is enough thought given to how a particular arrangement may help or hurt the flow of communication. Sometimes the seating arrangement will create an austere and official atmosphere; other settings may be close and warm.

Principle: AN INTERVIEWER SHOULD SELECT A SEATING ARRANGEMENT THAT WILL MAXIMIZE COMMUNICATION.

Of the four seating arrangements diagramed above, which do you think would be more likely to be effective? Which would you feel more comfortable with? Which do you think the client would be more comfortable with? There are a number factors that can be considered in helping you answer these questions. First, there is probably no single seating arrangement that will be perfect for all situations. The interviewer must be flexible enough to experiment with different arrangements. Will you be taking notes while interviewing? If so, do you want the client to be able to see what you are writing? Would this make him more at ease? If so, which arrangements would facilitate this? Do you want to project yourself an authority figure? If so, then diagram A would be

appropriate. Do you, on the other hand, want the client to feel closer to you and not get the impression that you are hiding behind a desk? Do you think it would ever be wise to change a seating arrangement in the middle of an interview? If a particular arrangement is used for the initial interview, do you think a different arrangement might ever be appropriate for follow-up interviews with the same client? When a client lifts his head, do you want him to be always looking straight at you (diagram A), or do you think that it might be more comfortable for the client to be able to face his head in other directions (diagram B or C) without appearing to be roaming his attention about the office?

Of course, an office is much more than an arrangement of desks and chairs. What are your reactions to the potential benefits or disabilities of the following:

1. On the wall there are numerous posters containing revolutionary slogans.

2. On the wall there are a half-dozen citations, certificates and degrees.

3. The interviewer's desk is clustered with papers and books.

4. The room is completely bare except for two chairs and a desk.

5. The interviewer is dressed very casually, almost as if he is at a picnic.

6. The interviewer is wearing a formal three-piece suit.

7. The interviewer is smoking, eating lunch or drinking coffee.

8. The interviewer has no ash tray visible in the room.

9. On the interviewer's desk, there is an open case file of another client.

10. The secretary keeps knocking on the door or calling the paralegal on the phone for "emergencies" that require immediate attention.

11. The paralegal does not have his own office and talks to the client within hearing distance of secretaries or other personnel.

Generally speaking, room settings that are extreme should always be avoided. Furthermore, the paralegal must be scrupulous in preserving the confidentiality of a client's case. Item nine above, therefore is totally inappropriate and unethical. What about item eleven?

Principle: PARALEGALS SHOULD ALWAYS PRESERVE THE CLIENT'S RIGHT TO HAVE HIS CASE REMAIN CONFIDENTIAL.

Client: *It's a little hard getting around lately.*

Paralegal: *What do you mean?*

Client: *Oh, I just ache all over, you know, and on a hot day like this... my asthma gets up and, you know, I can hardly breathe sometimes. I'm sorry. I'm just a little out of breath coming up the stairs and all.*

Paralegal: *Well, just take your time and relax a bit.*

Client: *It's these bus drivers...I don't have a car, I lost it. It's not easy to get around...* [Pause] *Well, I feel a little better now.*

Paralegal: *Uh-huh.*

Client: *My wife is sick, and me, I'm not feeling too good. I've been sick about two or three years. It goes back about eight or nine years. The last two or three years, I honestly haven't been able to do anything.*

Paralegal: *Sir, I didn't get your name.*

Client: *Donelly, Sam Donnelly, the wife's name is Sarah.*

In this sequence, it's perhaps more significant to note what the paralegal did <u>not</u> do than what she did do. It may have been very tempting for the paralegal to have begun by asking the client, "what can I do for you," or "what's the problem" as soon as he sat down. Instead, the paralegal allowed the client to talk about what was on <u>his</u> mind. The interview did not begin by the paralegal directing the course of the interview through questions or comments. There are a number of benefits to this approach. First, the client is given an opportunity to relax; he is not immediately pressured by questions. Second, the message that comes across is that the paralegal is interested in the client as a person. The client obviously wants someone to listen

to his story of how the world is mistreating him. He's sick; he can't get around, etc. It's too easy to dismiss such talk as either irrelevant to the interview or as typically senile. Much more sensitivity is required. Apparently this client is old and without substantial means. Perhaps to him the most significant information about his life is that he is old and sick. It's an extremely important event to him to be able to share this with others and to have it listened to with concern. Third, by letting the client talk, indeed, by letting him ramble on a bit, the paralegal may be able to collect information not as easily obtainable by pointed questioning at the outset.

There are, of course, limitations in this approach. The paralegal does not have all day to interview this client. In all likelihood, there are four or five other clients outside waiting to be interviewed as well. In the interview under analysis, however, the exchange was not burdensome; it took a matter of seconds before the paralegal began to direct the attention of the client to such basic data as his name. It's not always easy to break off the conversation in this way. The interruption needs to be handled with tact.

Principle: THE INTERVIEWER SHOULD CONSIDER THE ADVANTAGES OF PERMITTING THE CLIENT TO SAY WHAT IS ON HIS MIND AT THE OUTSET IN PLACE OF BEGINNING WITH A SERIES OF QUESTIONS.

If the client has nothing to say at the outset, then of course the paralegal will have to take the initiative with some questions such

as, "how are you today," "is there anything I can help you with," or "I understand you've come to this office about a legal matter".

Soon after the interview begins, the paralegal should be taking notes on what the client is saying. At the beginning, the paralegal may be taking only mental notes to be put down on paper later. The notes do not have to be extensive. One or two word sentences should suffice to permit the paralegal to recall the topic later on in the interview. The paralegal should say something about the notes to the client such as, "I hope you don't mind if I make a few notes on what you say so that I don't forget them." This should set the client's mind at ease about the writing. The client will probably respect the paralegal for his thoroughness and for his consideration in explaining the writing to him. In addition to aiding the paralegal's memory, the notes serve another important function: recordkeeping. In a law office, every case must be adequately documented. Personnel other than the paralegal will probably be working on the case at any number of stages. A well-kept case record can save a great deal of time and insure accuracy. After the initial interview, the paralegal should take the time necessary to compose a coherent report on the interview from his notes. Some offices have forms for interviewers to use in making this report.

Principle: THE INTERVIEWER SHOULD TAKE NOTES AND EXPLAIN TO THE CLIENT WHY HE IS TAKING NOTES.

The paralegal is always looking for clues (or "flags") of potential legal problems. From the brief exchange between the paralegal and Mr. Donnelly, a number of such problems surfaced. At some point in the interview, the paralegal must ask questions about them if further information is not volunteered by the client. Note that the client may not know which of his problems are legal and which are not. He may have come in with one problem on his mind but reveal a number of problems as he speaks. Here again we see the value of letting the client talk. This approach is much more beneficial than saying to the client, "tell me all your legal problems." It is the job of the interviewer to assist the office in identifying such problems. What are some of the potential legal problems that he has that will require further inquiry?

1. He lost his car. Was it stolen or repossessed?

2. He is sick. Is he getting proper medical attention? Is he receiving all the public medical services that he is entitled to?

3. His wife is sick; same questions as to her.

4. Is there an emergency that requires immediate attention?

The fourth question is essential. Very early in the interview, the paralegal must determine whether a crisis exists with respect to such matters as health or housing. If so, then the office must immediately

act either through legal proceedings or through helping the client get government emergency social services.

Principle: THE INTERVIEWER IS ALWAYS ALERT TO THE FLAGS INDICATING POTENTIAL LEGAL PROBLEMS.

Paralegal: *Mr. Donnelly, I am a paralegal...*

Client: *A what?*

Paralegal: *A paralegal. I am not an attorney. My job is to get some preliminary information so that when you do see a lawyer, he'll be able to help you a lot quicker.*

Do you think that the client understands who Miss Collins is? If he were asked what a paralegal is, what do you think he would answer? What obligation does the interviewer have, if any, to be sure that the client knows whom he is talking to before asking the client for personal information?

Principle: IT SHOULD BE MADE ABSOLUTELY CLEAR TO THE CLIENT THAT THE PARALEGAL IS NOT A LAWYER SO THAT THE CLIENT IS GIVEN THE OPPORTUNITY TO REFUSE TO TALK TO ANYONE BUT A LAWYER IF THAT IS HIS WISH.

As a matter of honesty, courtesy and ethics, this principle should

always apply. It is possible for a paralegal to describe who he is so quickly that not only does the client not understand him, but also doesn't have time to collect his thoughts about whether he wants to talk to a non-lawyer. He probably came into the office expecting to see a lawyer. Instead, he is confronted with a layman. In most situations, this will not cause the client any difficulty, but he should be given the chance to think about the situation he is in so that he can decide whether he wants to object. The danger is that the interviewer will be so preoccupied with doing his job that he won't be sensitive to all the reactions of the client.

Of course, a paralegal cannot describe who he is and what he does if he is not sure himself what he does, if he is not sure himself what his role is. A paralegal is a person skilled in the tasks of providing legal services. He derives his authority to act from two sources: (1) the supervision of his work by a lawyer and (2) the authorization granted by specific administrative agencies to permit non-lawyers to represent clients before them.

Unfortunately, too many paralegals describe their role in the negative; they start off by stating that they are non-lawyers. A more positive approach should be taken. "I'm a legal services specialist." "I'm a legal technician." "I'm a trained legal aide" etc. In consultation with the paralegal's supervisor, terminology and role description should be agreed upon that will positively reflect the value and skills of the paralegal.

Client: *I don't have any money and I went to these welfare people and they won't put me on the program. They say I'm not sick enough. And I haven't been able to do a solid day's work in, oh, two and a half years now. Every once in a while I do a little bit and I gotta lay down for two or three weeks. Go to the doctor a couple times a month. I've been to the hospital two or three times. So, you know, I don't really know how or what you can do about this. I certainly don't. I don't know what to do. My wife has been sick too. I'm not being treated right by those government people.*

Paralegal: *Everything's been hitting you at once, it seems.*

Note again how the client's story is beginning to unfold. The paralegal learns for the first time that Mr. Donnelly has been to a welfare department and has been told that he does not qualify for a "program" because he is not sick enough. Most assuredly, this information should go into the paralegal's notes for further questioning later. Clients tend to tell their stories piecemeal rather than in a coherent fashion that would be readily understandable by everyone. The job of the interviewer is to put these pieces together.

How would you characterize the paralegal's statement that, "Everything's been hitting you at once, it seems"? Patronizing? Sympathetic? Unprofessional? What effect do you think it had on the client? Do you think that the paralegal is taking sides with this statement? Suppose the paralegal said, "It sounds like the government is really trying to do you in," or "Well, of course, you know, Mr. Donnelly, the government is made up of a large group of people and it's almost impossible for them to please everyone." Would these be appropriate opinions for the paralegal to express, even if he really believes either of them? Shouldn't he be honest about his feelings? Generally speaking,

it is much more appropriate for the paralegal to be neutral in the expression of his personal opinions. His job is not to comment upon the evils of government or to be apologetic about government. This does not mean, however, that he should always refrain from expressing his personal feelings about subjects, even if it involves the client's case. If the client is telling a "horror story" about his life, it would only be natural for the paralegal to react with surprise or disgust. This is fine so long as the paralegal does not lose his perspective in clearly identifying with one side or another of an issue. The paralegal is the representative of the client, but this does not mean he must lose objectivity in trying to gather all the facts.

Principle: THE INTERVIEWER SHOULD EXERCISE SELF-RESTRANT IN THE EXPRESSION OF HIS OWN OPINIONS OR FEELINGS: HE SHOULD REMAIN NEUTRAL UNLESS IT WOULD BE AWKWARD AND UNNATURAL FOR HIM NOT TO EXPRESS HIMSELF IN THE CONTEXT OF THE INTERVIEW.

It's too tempting and easy for the paralegal to become overly involved in the emotional aspects of assisting people with legal problems. The paralegal must retain his composure in a milieu where tempers can run high and where facts can change rapidly. Often the best legal services can be provided by someone with a cool head. Again, this does not necessarily mean that the paralegal cannot identify with the very real frustrations and problems of the client.

Objectivity is not inconsistent with empathy.

Paralegal: *Mr. Donnelly, do you have any papers with you...anything that was sent to you concerning the problem that you want some help on?*

Client: *Yes, I brought it along here. There's stuff on there - numbers and everything - I didn't understand it all.*

Paralegal: *Okay, let's take a look at it.*

Now the paralegal has gotten through the preliminaries and the central core of the interview is about to begin. There are a number of options available to the paralegal to begin. Here the paralegal began concretely by asking a directed or close-ended question, one that required the attention of the client to narrow into a very specific area — the legal papers. This is usually a good way to begin. The event that convinces clients that they should receive legal help is often the receipt of papers, either through the mail, or delivered (served) to them in person. The papers may be confusing and upsetting. It's comforting for the client to have someone focus on them soon.

Principle: THE INTERVIEWER SHOULD ALWAYS TRY AS SOON AS POSSIBLE TO FOCUS UPON CONCRETE MATTERS THAT ARE BOTHERING THE CLIENT.

There are other ways that the paralegal could have begun. The client could have started with the question, "what's the problem," or "what's on your mind". These are an open-ended questions. They invite the client to respond in a wide variety of ways within the general confines of the question. Unlike the directed or close-ended question, the client is given "control" of the situation when asked an open-ended question. The danger of such a question is that the client will ramble on at great length, providing relevant and irrelebent data. It may be difficult for the paralegal to follow the answer. On the other hand, the client may have a need to vent his frustrations in this way. It is often important for him to "get it off his chest," out of an anxiety to have someone listen to his complete story. Once the client has been allowed to experience this catharsis, he may be better able to relate to the more specific questions of the interviewer.

Principle: INTERVIEWERS MUST BE PREPARED TO KNOW WHEN CLIENTS ARE READY TO ANSWER DIRECTED QUESTIONS.

Another way for the paralegal to have begun would have been by referring back to something the client said earlier in the interview. For example, the paralegal could have said, "Mr. Donnelly, you said earlier that you applied for a program. Could you tell me a little bit more about that?" It can be reassuring for the client to know that the interviewer has been listening to what he has been saying

and wants to know more.

One of the most effective ways to assist a client to collect his thoughts and tell his story coherently is by asking a series of questions which will structure the client into a chronological restatement of what happened. For example, "when did you become ill," "how was the illness treated," "when did you apply at the welfare department," "what happended next" etc. The client has one large story to tell and a series of sub-stories. Each story can be conceived of as a unit with a beginning, middle and end. Assisting the client to reconstruct his stories chronologically will aid him to recall details and will assist the paralegal in organizing his notes later on for the records.

Paralegal: *This is a letter from the welfare department denying your application for disability payments. When did you get this, Mr. Donnelly?*

Client: *Oh, just a couple of weeks ago. They are liars, Miss, I want you to know. They are not treating me right. I should stay away from there; they don't treat me with respect.*

Clients are very much inclined to think in terms of opinions, conclusions and characterizations, as opposed to facts. A primary objective of the interviewer is to identify the facts. The client's interpretations of the facts may be important. However, the discussion must go beyond or behind the interpretations to get to the basic factual questions: who, when, where and how? When a client gives an opinion or a characterization of a fact or series of facts, the interviewer must ask the client to talk about what happened which

led to the interpretation. When and if a client gets into an agency proceeding or a court hearing, the referee or judge will focus primarily on the facts that are alleged. Hence it is the job of the interviewer, as early as possible, to uncover as many underlying facts as are relevant.

Principle: AN INTERVIEWER SHOULD ALWAYS ENCOURAGE A CLIENT TO SPELL OUT ALL THE FACTS WHICH LED HIM TO A PARTICULAR CONCLUSION OR INTERPRETATION OF WHAT HAPPENED OR IS HAPPENING.

The paralegal asked the client when he had received the letter. From the paralegal's study of welfare law in other training sessions, he knows that there are certain requirements that must be met whenever the welfare department makes decisions that affect the case of applicants or recipients. One such requirement relates to the time span between the date of the decision and the date the client is notified of the decision. Another problem is the length of time the client has to appeal after receiving written notice of a decision.

Paralegal: *Why did you wait two weeks to come in?*

Client: [Mr. Donnelly slumps a little in his chair and looks around the room].

Paralegal: *Well, it's not that important.*

Here the paralegal has asked a "why" question, potentially calling into question either the client's motives or his competence. Luckily, the paralegal picked up on the inappropriateness of the question right away from the non-verbal cues that the client was giving through the change in his seating posture and in the apparent loss of his attention. The paralegal must always be alert to non-verbal communication: mannerisms, gestures, silence, etc.

Principle: THE INTERVIEWER MUST BE ABLE TO INTERPRET NON-VERBAL FORMS OF COMMUNICATION.

Principle: "WHY" QUESTIONS CAN BE DANGEROUS.

Paralegal: *Well, Mr. Donnelly, what I'll like to do is find out a little bit more about what happened. When did you first apply?*

Client: [A long silence].

Paralegal: *Mr. Donnelly, when did...*

Client: *I don't know.*

While it is true that the interviewer must get the client to focus on facts as opposed to opinions, it is also true that the interviewer runs the risk of turning the client off by so doing. This particular client is very opinionated and may have taken offense to the interviewer's sudden shift from his (the client's) opinions (e.g., "liars") to the

"why" inquiry and to the cold facts ("when did you first apply.") A client who is silent or who uses comments such as "I'm not sure" or "I don't know" may be on a different wave length from the interviewer. The client often has his own agenda and his own expectations from the interview which, if not respected, may lead to noncooperation or even hostility. Of course, a statement, "I don't know" may mean nothing more than the absence of knowledge, just as silence may simply mean that the client needs more time or guidance to remember the facts. On the other hand, they could be a signal to the interviewer that communication is breaking down. There are a number of ways to deal with this. The interviewer could change the topic for the moment. He could ask the client if anything is troubling him. Or, he could simply proceed and try to "play it by ear." In Mr. Donnelly's case, all that may be required is the opportunity to express his opinions as often as possible. This is fine so long as they do not interfere with the fact gathering function of the interview.

Principle: INTERVIEWERS MUST BE ABLE TO RECOGNIZE CLIENT DISCOMFORT OR NONCOOPERATION AND TO DEAL WITH IT FLEXIBLY.

Paralegal: *Could I ask you what you mean by their not treating you with respect?*

Client: *I am disabled and they tell me I'm not. It's plain for anyone to see.*

Paralegal: *What we would have to do then, Mr. Donnelly, is to try to show that they are wrong.*

Client: *Yes, very wrong.*

Paralegal: *And to do it, what we need to do is get a complete picture of all the facts so that when we challenge them, we will be able to do it right. So, I'd like to start by your giving me an estimate (in days, weeks or even months) of how long ago you first applied.*

Client: *I think it was about a month ago, maybe two. I have it written down at home.*

The paralegal has apparently been successful in regaining the cooperation of the client, if indeed it was ever lost. How would you analyze this exchange? What do you think the paralegal did that was or was not effective? Note the sensitivity with which the paralegal is questioning the client. The client was initially asked when he first applied. The paralegal got no response. Now the same question is asked less directly in terms of estimates with greater success.

Principle: THE STYLE OR MANNER OF QUESTIONING SHOULD FLEXIBLY FIT THE UNFOLDING AND OFTEN SHIFTING CONTEXT OF THE INTERVIEW.

Paralegal: *Okay, looking at your letter here, I see that it was signed by Ralph Smith of the welfare department. After you leave, I will call him and ask him about things such as the date you applied. In addition, I'd appreciate it if you would call me when you get home and have had time to look at your own notes of when you applied. Could you do that?*

Client: *Yes, I will.*

Whenever practical, it is wise to have the client take some steps on his own behalf after the office has agreed to handle the case. This tends to insure a sense of involvement and cooperation between office staff and client. It also is a step in the direction of accuracy since the client is often in the best position to collect certain facts or perform certain tasks. The client should not be asked to undertake anything beyond his capacity, however. In this case, checking the client's own records to obtain a date is sufficiently definite and realizable to warrant his undertaking it.

Principle: WHENEVER PRACTICAL, THE INTERVIEWER SHOULD ASK THE CLIENT TO PERFORM TASKS ON HIS OWN TO AID THE OFFICE IN HANDLING HIS CASE.

Exactly how much you can ask a client to do depends on the circumstances. Some clients may be willing and able to do a good deal, e.g., locate a lost relative, make a written list of all known debts, etc. Again, however, this aspect of legal services must be handled with care. The client cannot be asked to do the job of the paralegal or the attorney.

In this sequence, the paralegal told the client that she was going to call the welfare department. The client should always be told what steps the office proposes on his behalf. A client needs to know that action will be taken. Some interviewers will go even further; they will take action while the client is in the office. For example, instead of telling the client that Mr. Smith would be called,

the paralegal might decide to call him right away. This has the added benefit of having the client immediately available to answer questions that the paralegal has that may grow out of the phone conversation. Other interviewers prefer to talk on the phone in private so that they can be free to say anything they want. What do you think? Can you think of any situations where it would be unwise to make the call while the client is in the office? What about Mr. Donnelly's case? When should Miss Collins make the call to Mr. Smith?

Principle: AS OFTEN AS POSSIBLE THE CONCRETE STEPS THE OFFICE PROPROSES TO TAKE ON BEHALF OF THE CLIENT SHOULD BE EXPLAINED TO THE CLIENT.

A primary reason for explaining this to the client is that it is his case. He is the one who will suffer if inappropriate steps are taken. Normally, he will defer totally to the judgement of the office, but he deserves the opportunity to hear what your plan of action is and reject it if he wishes.

Principle: THE INTERVIEWER MUST ALWAYS REMEMBER THAT IT IS THE CLIENT WHO MAKES THE FINAL DECISION ON WHETHER HE WANTS THE OFFICE TO REPRESENT HIM. HE ALWAYS HAS THE OPTION OF CALLING IT ALL OFF.

Paralegal: *I think that you have a good idea about making your own notes on what happens and I would urge you to continue doing it. Time and again here in the office we have clients who are unsure about such basic things as dates, amounts, what was signed, and so on. Of course, you can't be expected to have a record of everything. We have to be practical. All I'm saying is that it's a good idea for a person to keep a record of as many basic things as possible.*

Here we have the paralegal stepping out of her role as interviewer and becoming a lecturer. This can be upsetting to some clients; others will appreciate it very much. The lecture was on what is called preventive law or community legal education. Preventive law is the taking of steps to avoid legal problems before they occur, or of dealing with them effectively when they arise so that matters don't get worse. The lecture on the client keeping her own records is fundamental since documentation in the law is fundamental. If a merchant or governmental agency is about to make a decision that the client doesn't like, the client may be able to head off the decision by producing records or documentation. The paralegal as legal educator, of course, must be very careful in doing this. The client must be given proper guidance and must always feel free to take advantage of the legal service office. The paralegal must also time his lecture properly. Perhaps the best time is at the end of the interview. The client may not be receptive to general guidance until his specific problem is dealt with. In the case of Mr. Donnelly, however, the lecture in the middle of the interview was probably appropriate because it naturally flowed out of the topic then under discussion.

Principle: WHENEVER PRACTICAL, THE INTERVIEWER SHOULD TAKE THE OPPORTUNITY TO INSTRUCT THE CLIENT IN THE PRACTICE OF PREVENTIVE LAW FOR THE FUTURE.

Paralegal: *Okay, fine. Just as soon as you can call me, please do it. Now, I want to ask you some questions about your medical history. First, let's get back to this letter. It says that your application for Aid for the Totally Disabled was denied because they say you were not disabled enough. It also says that they examined the medical records that you brought with you. Is that right?*

Client: *Yes, I brought my papers there.*

Paralegal: *Do you have these papers with you now?*

Client: *No, they are at home. Do you want me to bring them to you?*

Paralegal: *Yes, would you? Why don't you take this piece of paper and make a note of the things you should do. First, you are going to call me to let me know the date you first applied. Then you are going to bring me the medical records that the welfare department looked at when they were deciding on your application. Do you have all that?*

Client: *Yes, I think so.*

Paralegal: *Could you give me the name and address of the doctor that most recently examined you?*

Client: *Dr Edward Zuder of 7th Avenue; I don't know the exact address.*

Paralegal: *What other doctors have examined you?*

Client: *Well, I'm not sure. There was one that I saw a few months ago in Marin County.*

Paralegal: *Do you remember his name?*

Client: *Johnson, or Thompson, I don't recall fully. I think my wife would know. I'll ask her. She's better at names than me.*

Paralegal: *That would be fine. Have her do that. In fact, Mr. Donnelly, what I am going to need is a list of every doctor that you have seen within the last ten years or so. When you bring me your medical records, a lot of the names and addresses will be there. Some may not be. Just try to remember - you and your wife - as*

many as you can. Why don't you add that to the list of things you are going to do.

Client: *For ten years? Why do you need all that for?*

Paralegal: *I know it's a lot of information, but from experience with the welfare department, we know that old medical records are often very important. We should be prepared.*

Client: *We'll, I'll get what I can.*

The paralegal is probing for information. Probing is important, but sometimes difficult to do. The client should never get the impression that he is being interrogated or cross-examined. It is obvious that Mr. Donnelly cannot be pushed much further. He cannot be expected to recall all the information the paralegal is seeking. When he was surprised at being asked for information dating back ten years, he may have been reacting not simply to the difficulty of obtaining such data, but also to the possible implication that the paralegal doubted his claim that he has been very sick. Do you think that the client got the impression that he had to prove something to the paralegal?

Principle: PROBING IS A VALID TECHNIQUE OF DATA GATHERING, BUT IT MUST BE EMPLOYED WITH CARE IN ORDER TO AVOID MAKING THE CLIENT UNCOMFORTABLE.

The paralegal did not simply rely on probing the client to obtain information. Miss Collins has a talent for organizing appro-

aches to data gathering. She asked the client to check his records and call her, and she also asked him to bring records to her. Finally, she will take some initiative in making some calls herself. These are a series of comprehensive steps calculated to obtain facts and to cross-check the validity of the facts.

Principl: PROBING IS ONE TECHNIQUE USED BY THE INTERVIEWER IN CONJUNCTION WITH OTHER TECHNIQUES TO OBTAIN THE FACTS.

The steps used by the paralegal demonstrates the intimate relationship between interviewing and investigation (See Appendix "B"). The interveiwer is laying the groundwork for the investigative function (which in this office may or may not be performed by the same paralegal). Both the interviewer and the investigator are after relevant facts that can be verified or documented. If names, dates and witnesses have to be tracked down in the field by the investigator, the process has been begun by a thorough interview.

The same is true of the informal and formal advocacy function. At some later point, the office (perhaps through this same paralegal) may try to negotiate the case with the welfare department through informal advocacy in order for Mr. Donnelly to get what he wants without having to resort to a formal agency hearing or a court proceeding. If informal advocacy doesn't work, formal advocacy at agency hearings or in court may be tried. All of these steps begin with and are dependent upon a competent initial client interview. The ground floor is established at this level with fact and problem

identification, on the one hand, and a trustful, cooperative client on the other.

Principle: INTERVIEWING IS INTIMATELY CONNECTED WITH AND IS THE FOUNDATION FOR INVESTIGATION, NEGOTIATION AND FORMAL ADVOCACY.

Client: *Do you think I have a chance of winning?*

Paralegal: *Well, we're going to study your case carefully. I can tell you definitely that you do have a right to fight the department for denying your application. This could mean forcing them into a fair hearing. Before any final decision on strategy is made, however, I and one of the attorneys here in the office will be checking with you.*

Client: *I see.*

Has the paralegal given the client legal advice? The paralegal is interpreting administrative regulations on challenging welfare decisions in reference to a particular client's case. On the other hand, it may be argued that the paralegal is merely providing the client with general information about the law as opposed to giving advice to a specific client.

Generally, if an administrative agency authorizes a layman to represent clients before it, this authorization should include the giving of legal advice in preparation for such representation. The welfare department in fact provides such an authorization. Hence,

whether the paralegal was giving legal advice to Mr. Donnelly or simply explaining the law generally, it was proper. If there is no specific authorization for lay representation at agency hearings, then the paralegal cannot give legal advice. Normally, no such authorization exists when the case involves the traditional court cases of divorce, landlord-tenant and consumer fraud, etc. In such cases, the role of the paralegal is limited to fact gathering in interviewing and investigation, problem identification, preliminary drafting of legal documents for lawyers, legal research, etc. Of course, in every kind of case, a paralegal can give clients legal advice when the advice is specifically dictated by a lawyer. In such situations, the paralegal is merely relaying a message from the lawyer to the client.

Principle: THE PARALEGAL MUST KNOW WHAT LEGAL ADVICE IS AND WHEN HE CAN AND CANNOT GIVE IT TO CLIENTS.

The paralegal properly instructed the client on how the office functions in handling cases: paralegals work closely with attorneys and both are in regular communication with the client.

The paralegal used the phrase "fair hearing" without explaining that this is the technical procedure used by the welfare department to permit clients to challenge its actions. The client, on the surface, appeared to understand when he said, "I see." It is more probable however that the client was simply covering up his confusion by being polite.

Principle: TECHNICAL TERMS (LEGAL OR OTHERWISE) SHOULD EITHER BE REJECTED IN FAVOR OF UNDERSTANABLE ENGLISH OR EXPLAINED CLEARLY TO CLIENTS.

Paralegal: *Well, I think that we have gone about as far as we can today. Is there anything else that you want to tell me, anything that I should know?*

Client: *What do ya mean?*

Here again it is possible that the client could take offense to this last question of the paralegal. The client might be thinking, "Doesn't she trust me? I've tried to tell her everything." On the other hand, experienced interviewers know that clients are given to a natural inclination to overstate their case, to highlight what they feel are the good points of their case, and minimize anything negative about their case. They do this perhaps out of fear that the office would not take their case if it knew the whole story. Furthermore it may take more than one interview for the client to place his full trust in the paralegal or in the office as a whole. Nevertheless, the interviewer must pursue every aspect of the case, even what may be damaging. Better to learn everything now, so that the office can be prepared to answer potentially negative factors, than to be caught suprised at a hearing with information that at least appears damaging.

While it is true that the paralegal must try to uncover everything, there are effective and ineffective ways of going about it. The approach taken by the paralegal here does not appear to be effective. The blanket question she asked is not likely to get the message across that she needs to know everything. She was quite indirect, vague and potentially condescending. If the paralegal suspected that there were aspects of the case that the client was concealing, she should have asked specific questions designed to determine whether her supicions were valid. Furthermore, she should have explained to the client why it is important to tell the complete picture. Perhaps this would necessitate some explanation to the client of how our adversarial system of justice works. When advocates for clients go before referees or judges or juries, it is their duty to present the best case possible for the client. It is the job of the advocate for the other side to point up the negative aspects of the case. The advocate for the client, however, must be ready in advance to respond to what the other side will say. Hence, the necessity to know everything as soon as possible. The key point that must be made to the client is that the office will not refuse to serve a client simply because he doesn't have a perfect case.

Principle: INTERVIEWERS MUST UNCOVER BOTH THE POSITIVE AND DAMAGING ASPECTS OF A CASE.

Paralegal: *I have a few forms here that I would like you to sign. They simply give this office your authority to represent you and to look at your welfare and medical records. You'll sign these here, won't you?*

Client: *You want me to sign this here?*

Paralegal: *Yes, would you?*

Client: *Okay, should my wife sign?*

Paralegal: *No, that won't be necessary.* [Client signs]. *Fine.*

Asking the client to sign papers is always a delicate matter. Very often, the client does not know what he is signing, and a brief explanation of what the signing is for is usually <u>not</u> very helpful. The interviewer should assume that the client is confused about the signing. Whenever possible, the interviewer should give the client the chance to read over what he is being asked to sign. The client should be encouraged to ask questions about what he doesn't understand. Not only is this good practice as a matter of courtesy, but also it is good training for the client to read carefully and ask questions about any papers he is asked to sign <u>before</u> he signs.

Principle: BEFORE A CLIENT IS ASKED TO SIGN ANYTHING, THE INTERVIEWER SHOULD BE SURE THAT THE CLIENT KNOWS WHAT HE IS SIGNING, WHY HE IS BEING ASKED TO SIGN AND FINALLY THAT IT IS UP TO THE CLIENT TO DECIDE WHETHER HE WANTS TO SIGN OR NOT.

Whenever a question is asked and the answer is strongly stated or implied in the question, we have a leading question. Leading questions are potentially dangerous because of the manipulative way in which words are put into the mouth of the person being asked the question. Here are some examples: "Mr. Jones, you knew that it was past midnight when you called, isn't that right?" "Wasn't it past midnight when you called?" Leading questions attempt to pressure the individual to answer in a certain way. This is not to say that a person asking leading questions is always devious. People can ask leading questions without even realizing it. They may feel that they are helping out by asking the question in this manner.

Principle: INTERVIEWERS MUST BE ABLE TO RECOGNIZE THEIR OWN LEADING QUESTIONS AND TO UNDERSTAND THE DANGERS OF SUCH QUESTIONS.

Now, look again at the statement "You'll sign these here, won't you?" Is this a leading question? Should the question have been asked in this way?

Paralegal: *Just a couple of points before we conclude, Mr. Donnelly. You said something earlier about having lost your car. What did you mean?*

Client: *Well, I had to give it to my nephew. It wasn't safe for me to drive, you know, I've been very ill lately.*

Paralegal: *I see. What about your wife? You said that she was sick. Has she applied to the welfare department for the same benefits that you applied for?*

Client: *Why, no. I never thought of her going ahead. Do you think I should?*

Paralegal: *You certainly can't lose anything. It's up to you if you want to give it a try.*

Here the paralegal is going back to her notes to ask about some matters that she picked up earlier. This is the sign of a thorough interview. The office is interested in all legal aspects of the client's needs. The paralegal suspected that the car involved the client in creditor or repair problems. It was totally appropriate to check this out. The law, however, is critical of lawyers who try to stir up legal problems and who go on so called "fishing expeditions" to discover legal problems of the client and to bring them into court. Such stirring up of litigation is frowned upon. This was not the case here, however. The paralegal properly inquired about issues suggested by what the client told her. What could be construed as questionable behavior of the paralegal would be questions such as, "think hard about whether you have any other legal problems that we can sue on and about whether your relatives or neighbors have any cases we can take."

Principle: INTERVIEWERS MUST NOT STIR UP LITIGATION.

The suggestion to the client that his wife apply for benefits raises another question about the role of the paralegal and the office. Clients should not be pressured, persuaded or urged to take courses of action. The task of the office is to lay out options for the client, explain the merits and demerits of each option and leave it for the client to decide what he wants to do. If the client asks for a recommendation on what option to choose, an answer should be given, but it should always be made clear to the client that he has the final responsibility to decide what he wants to do. The paralegal in this case acted properly. She did not urge Mr. Donnelly to do anything. She made the client aware of the option concerning his wife and responded to the client's specific request for her opinion about whether he should take the option.

Principle: THE INTERVIEWER SHOULD NOT PRESSURE THE CLIENT TO TAKE ANY COURSE OF ACTION.

Paralegal: *Okay, Mr. Donnelly, let's leave it at that. If you don't have any more questions, we can conclude now. I will be talking to an attorney about your case shortly. You will call me about the date we spoke about and bring me your medical records. Then I will call Mr. Smith at the welfare department to find out what I can from him. If your wife wants to talk to me about applying, have her come by or call me. We'll be glad to help her in any way we can.*

Client: *Okay, and I thank you.*

Paralegal: *Thank you for coming by. I hope we can help you. Good-by.*

Client: *Good-by.*

The final comment of the paralegal is very significant. It is important not to leave the client with the impression that the office is definitely going to win the case for him. It would be easy to raise this expectation in the mind of the client, since undoubtedly, this is what he wants to believe. More realistically, all the office can say is that it will do the best it can for the client, and that no guarantees of success can be given. The comment "I hope we can help you" is appropriate to convey this message.

Principle: THE INTERVIEWER MUST NOT RAISE FALSE EXPECTATIONS IN THE MIND OF THE CLIENT ABOUT WHAT THE OFFICE WILL BE ABLE TO DO FOR HIM.

APPENDIX "A"
DETERMINING ELIGIBILITY IN A LEGAL SERVICE OFFICE

Government funded legal service offices do not charge clients for their services so long as they live within a designated geographical area and meet an income test. Regulations exist on how much income and assets a family can have in order to be eligible. The interviewer (or sometimes the receptionist) has the job of determining eligibility based upon office charts. In the case involving Mr. Donnelly, let's look at how the eligibility issue could be approached.

Paralegal: *Mr. Donnelly, before we get down to the specifics of your case, I need to ask you a few questions. As you may know, this office does not charge clients for its services so long as the client lives within the area served by this office and you do not have income above a certain level. We only provide free service to low income clients.*

Client: *Well, I'll tell ya, I think I could pass the test, yes mam! The welfare people don't think I'm poor, I have a little nest egg, but I haven't been able to work over the years...*

Paralegal: *How much do you have left?*

Client: *I have about $200, $300 in the bank.*

Paralegal: *Uh-huh.*

Client: *But I'll tell ya, that's about to be eaten up. I don't have a car. It's really hard to get around on public transportation. Other than that, the wife's got a little bit of jewerly, a wedding ring, stuff like that. And that's about it.*

Paralegal: *Do you rent an apartment?*

Client: *Yes, we do.*

Paralegal: *What about Social Security. Do you recieve any income there?*

Client: *Well, we get a little bit of Social Security.*

Paralegal: *How much is that?*

Client: *$105 a month. I can't live on that. My wife is taking work into the house like...She's been sick lately. We don't have the money coming in.*

Paralegal: *How many children do you have?*

Client: *We have no children at home.*

Paralegal: *Okay. Let me ask you a couple of other questions. I want to make sure that I have the street right. You want to give that to me?*

Client: *Delores, 1423 Delores Street.*

Paralegal: *What about a phone? Still have it?*

Client: *Well, we keep the phone because I gotta have it. I fall down, get dizzy, need medication for my head, my back, and I gotta have it, so we do have a phone. The number is 824-8027.*

Paralegal: *824-8027. Fine. Well, it's pretty clear that you're eligible for our services.*

Client: *Very good, I sure do need it.*

Paralegal: *Okay, I've got some other questions that I want to ask you, and if there are things that you want to say, just stop me. If you have any questions, just stop me and ask.*

Client: *Okay.*

There is a danger of taking the responsibility of determining eligibility too casually, of rushing through routine questions in order to get to the legal problems. The danger is not that prospective clients are likely to lie about their income (statistical studies in similar areas have demonstrated the contrary), but rather the client is likely to be treated as a commodity rather than as a

person. Matters of income and wealth are intensely personal and must be approached with great delicacy. A rapidfire series of questions such as, "do you work," "how much do you make," "how much do you have in the bank," "do your relatives give you money," etc. can be very demoralizing. The common complaint against bureauracy is the distance and impersonality with which it deals with the public. There is absolutely no reason why a law office must act in the same manner, no matter how busy it is.

Note that the client was somewhat hesitant about answering some of the questions, and took every opportunity to demonstrate how poor he was. This is understandable. Perhaps he was not aware of the fact that the office was not actively looking for ways to disqualify people, and that he will normally be taken at his word on eligibility. In the rare case where a client provides misinformation on the eligibility questions, it will probably be revealed soon after the office starts working with him. The dignity of the client requires that the interviewer not assume that everything said is a lie until proven otherwise.

Principle: WHENEVER AN INTERVIEWER IS ASKING A CLIENT FOR PERSONAL INFORMATION, THE CLIENT SHOULD CLEARLY KNOW WHY THE INFORMATION IS NEEDED AND IT SHOULD BE TAKEN WITH GREAT SENSITIVITY.

When should the eligibility questions be asked? Normally interviewers ask them at the very beginning of the interview so that if the client happens to be ineligible, time will not be wasted. This reasoning is valid, particularly since the client is likely to be very frustrated if told he is ineligible after having begun to talk about his legal problems. On the other hand, it can be demoralizing to be asked about personal financial data as soon as the client sits down. At the very least, the interviewer should give the client a chance to relax and perhaps engage him in some informal conversation before getting to the eligibility questions. Some paralegals, however, feel uncomfortable about dealing with eligibility at <u>any</u> time during the beginning of the interview. They prefer to wait until legal problems have been discussed and the client has been shown that the office will try to help him before getting to eligibility. They feel that the atmosphere is more conducive to communication and confidence-building if no mention of finances is made until this time. What about the risk that the client will be frustrated if told he is ineligible toward the end of the interview? The paralegals argue that their experience in interviewing clients permits them to be able to determine whether a client is eligible or ineligible without even asking the eligibility questions. They have interviewed so many clients that they have developed a "feel" for who is or is not eligible. Whenever they suspect that a client may not be eligible, they will ask eligibility questions at the very beginning of the interview. In other cases, they rely on their judgment and wait till the end of the interview to confirm eligibility for the records.

APPENDIX "B"
INTERVIEWING AND INVESTIGATION

In many respects, the interviewer and the investigator perform the same function: laying the groundwork for successful problem resolution by effective problem identification and fact gathering. A major difference, however, is that the investigator is more likely to meet resistance in his task than the interviewer. The interviewer talks primarily to clients of the office who theoretically are fully cooperative. The investigator, on the other hand, is often in the field and on the phone dealing with potential or actual witnesses who are hostile. Nevertheless, there is a great similarity in the skills needed by the investigator and the interviewer. (In fact, in many offices the investigative and interviewing roles are performed by the same person). Some of these skills are as follows:

1. The ability to listen.
2. The ability to help someone tell his story coherently.
3. The ability to create confidence, i.e., to make someone willing to talk to you.
4. The ability to distinguish between facts and opinions or conclusions.
5. The ability to know what you are after and to be flexible enough in the techniques used to achieve your goal.

6. The ability to interpret non-verbal forms of communication.

7. The ability to write a report on what you did and saw.

8. The ability to spot clues (or flags) indicating additional legal problems.

9. The ability to work with lawyers.

10. The ability to understand the law so that it can guide you in your fact gathering.

11. The ability to distinguish between what is relevant and what is irrelevant or potentially irrelevant.

12. The ability to remain neutral in order to be objective, etc.

There are some aspects of the investigator's job that the interviewer seldom, if ever, performs. For example, the investigator often is seeking physical evidence (e.g., missing automobile license tags, indications of destroyed property), and searching records (e.g., locating birth records, checking corperate records on file with public agencies to determine the "real" owners of apartment buildings or businesses). To undertake these tasks, the investigator often works alone in pursuit of leads and in quest of voluminous files. Yet even these tasks frequently bring the investigator into contact with individuals from whom he must directly or indirectly solicit

assistance. In such instances the general skills of communication that are crucial to the interviewer must also be at the command of the investigator.

As indicated earlier, the most telling relationship between interviewing and investigation is that the former is the foundation for the latter. If client interviewing is done well, then the follow-up job of the investigator in verifying facts, uncovering new facts, uncovering new problems, etc. is immeasurably facilitated.

Finally, in many cases, both the interviewer and the investigator fulfill problem resolution roles. In contacting sources of information, for example, they may determine that the problem can be resolved relatively simply by providing missing information. In the case involving Mr. Donnelly, the paralegal will call Mr. Smith, the welfare caseworker, about the date the client initially applied for benefits. During the conversation, it may become clear that the problem was misunderstood by the client and that he will receive the benefits he sought by following a procedure that he initially did not comprehend. The investigator may find himself in similar situations as he makes his contacts. In this sense, the task of fact gathering often blends into problem resolution.

APPENDIX "C"
INTERVIEWING PROBLEMS

There are a number of role-playing exercises that a class of trainees studying interviewing can use. After each role-playing sequence, the class analyzes it through questions such as: Was it a good interview? Why or why not? What image was the interviewer projecting of himself? What image did the interivewer have of the interviewee and how was it manifested? How could the interview have been improved, etc.

Some suggested role-playing formats:

1. The instructor asks the class if anyone was involved, in any way, in a recent automobile accident. This individual is interviewed by another class member whose job is to get as complete a picture as possible of what happened. The interviewer at the outset knows nothing other than that some kind of an automobile accident occurred.

2. The instructor asks the class if anyone has recently had trouble with any government agency (e.g., post office, sanitation department, city hall). This individual is interviewed by another class member whose job is to get as complete a picture as possible of what happened. The interviewer at the outset knows nothing other than the fact that the person being interviewed has had some kind of difficulty with a government agency.

3. Form a circle of chairs centered around a single chair in the middle. The trainee sitting in the middle will play the role of the client. The trainees in the circle (numbering about ten) will be the interviewers in rotation. The instructor will ask one of the trainees to begin the interview. As this trainee runs into difficulty during the interview, the student to his right picks up the interview, tries to reslove the difficulty in his own way and then proceeds with the interview. If this trainee cannot resolve the difficulty, the trainee to his right tries, and so on. The objective is to identify as many diverse ways of handling difficulties as possible in a relatively short period of time. No one interviewer should have the floor for more than two or three minutes at any one time. The trainee playing the role of the client is given specific instructions about how to play his role, e.g., sometimes he is asked to be shy, other times he is asked to be demanding. The client should not overdo his role, however. He should respond naturally within the role assigned to him. Here are four sets of instructions to attempt this "interview in rotation:"

   a) The interviewer greets the client and says "I am a paralegal." The client is confused about what a paralegal is. The interviewer explains. The client is insistent upon a comprehensive definition that he can understand.

b) The client comes to the law office because he is being sued for negligent driving. The interviewer is getting the facts. The interviewer asks the client if he must wear eye glasses to drive. The answer is yes. The interviewer then asks if he was wearing eye glasses during the accident. The client is very reluctant to answer. (In fact, he was not wearing glasses at the time). The client does not appear to want to talk about this subject. The interviewer persists.

c) The client is being sued by a supermarket for $750.00 in grocery bills. The interviewer wants to get all the facts. The client has a poor memory and the interviewer must think of ways to help him remember. The client wants to cooperate but often says "I'm not sure."

d) The client wants to sue an auto mechanic. The interviewer wants to get all the facts. The client gives many opinions, conclusions and judgments (e.g., "the mechanic is a crook," "I was their best customer," "the work done was awful.") The interviewer is having difficulty getting the client to state the facts underlying the opinions. The client resists.

While these exercises are going on, the class should be discussing principles, guidelines and techniques of interviewing. At the conclusion, they all should be written down.

APPENDIX "D"
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